

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Mediacom Southeast LLC	)	CSR 6666-E
	)	
Petition for Determination of Effective	)	
Competition in Jackson, Alabama (CUID	)	
AL0097)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 28, 2008**

**Released: May 29, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Mediacom Southeast LLC (“Mediacom”), hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in the community listed on Attachment A and hereinafter referred to as “Community.” Petitioner alleges that its cable system serving the Community is subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Community because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). The petition is opposed by the City of Jackson, Alabama (“Jackson” or the “City”).

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Community listed on Attachment A.

**II. DISCUSSION**

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video

<sup>1</sup>See 47 U.S.C. § 543(a)(1). Mediacom also filed a Petition for Reconsideration of the City’s certification to regulate cable rates. We will dismiss Mediacom’s Petition for Reconsideration as moot because we have granted its petition for a determination of effective competition.

<sup>2</sup>47 C.F.R. § 76.905(b)(2).

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>5</sup>See 47 C.F.R. §§ 76.906 & 907.

programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>6</sup> This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>7</sup>

5. Turning to the first prong of this test, it is undisputed that the Community is “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>8</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>9</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Community to support their assertion that potential customers in the Community are reasonably aware that they may purchase the service of these MVPD providers.<sup>10</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>11</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>12</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Community because of their national satellite footprint.<sup>13</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Community.<sup>14</sup> Petitioner sought to determine the competing provider penetration in the Community by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of

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<sup>6</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>8</sup>*See* Petition at 3-4.

<sup>9</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006). *See* Petition at 3-4 and footnote 11.

<sup>10</sup>47 C.F.R. § 76.905(e)(2). Petition at 3-4 and Exhibit A.

<sup>11</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 6-7 and Exhibit B.

<sup>12</sup>*See* Petition at 3-4 and Exhibit 1.

<sup>13</sup>*See* Petition at 5. The City “accepts without conceding” that the DBS providers satisfy the first prong of the competing provider test based on the DBS providers’ nationwide footprint and prior Commission determinations. Opposition at 2.

<sup>14</sup>Petition at 6.

subscribers attributable to the DBS providers within the Community on a zip code plus four basis.<sup>15</sup>

7. In opposition, Jackson alleges that Mediacom has not met its burden of proving that over 15 percent of the City's households subscribe to DBS service. The City argues that Mediacom has failed to satisfy the second prong because it relies upon an allocation to project the number of DBS subscribers within the City.<sup>16</sup> Jackson argues that Mediacom has overstated the number of DBS subscribers because it relies on SBCA's zip code plus four data and neither the Commission nor the City has been able to verify that the information is accurate for the City's jurisdictional boundaries.<sup>17</sup> Jackson also argues that Mediacom has failed to provide supporting documentation to verify its franchise area and the appropriate zip code plus four information it provided to SBCA.<sup>18</sup> Jackson additionally asserts that the 2000 Census data should not be used because the City has experienced growth since the release of the 2000 Census and Mediacom should not be able to utilize Census information that is more than five years old and compare it to current DBS penetration numbers.<sup>19</sup> Jackson argues that the more current and accurate household data that should be used to calculate the percentage of DBS subscribers is the number of households separately billed for water services.<sup>20</sup> Jackson also cites the possible adverse impact on consumers, particularly senior citizens and other individuals living on fixed incomes who could be impacted by the elimination of rate regulation.<sup>21</sup>

8. In reply, Mediacom argues that it has satisfied its burden because it provided the SBCA DBS subscriber report as well as a report by Media Business Corp ("MBC") describing the underlying method used for the zip code plus four report from which SBCA derived its subscribership figures.<sup>22</sup> According to Mediacom, MBC's reports ensures that the zip code information provided by Mediacom to SBCA only included those zip codes that could be determined with "the strongest certainty to be within the city boundaries."<sup>23</sup>

9. We find that the City's arguments lack merit. We reject the City's argument that the 2000 Census data is outdated since we have consistently held that 2000 Census data is sufficiently reliable for effective competition determinations.<sup>24</sup> Nevertheless, the Commission has indicated that it "will accept more recent household data that is demonstrated to be reliable."<sup>25</sup> To update the occupied household population, the City has offered as evidence only the number of residents subscribing to water services. However, the City presents no evidence that the number of residents subscribing to water services equates to the number of occupied households in the City. In this regard, there are likely numerous vacant or part-time housing units that continue to subscribe to the City's water service. Because the City has not offered more-recent, equally-reliable data regarding the number of households in the franchise area, we will use the Census 2000 data submitted by Mediacom.<sup>26</sup> With regard to the DBS

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<sup>15</sup>*Id.* and Exhibit 6. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* at 3.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.* at 3-4.

<sup>21</sup>*Id.* at 2.

<sup>22</sup>Reply to Opposition at 2.

<sup>23</sup>*Id.* at 2-3.

<sup>24</sup>*See, e.g., Cablevision of Raritan Valley, Inc. et al.*, 19 FCC Rcd 6966, 6968 (2004); *Adelphia Cable Communications*, 20 FCC Rcd 4979, 4982 (2005); *MCC Iowa LLC*, 2005 WL 2513517 (2005).

<sup>25</sup>*Adelphia Cable Communications*, 20 FCC Rcd 4979, 4982 (2005); *MCC Iowa LLC*, 2005 WL 2513517 (2005).

<sup>26</sup> Even if we were to use the City's household population figure of 2,450, the DBS penetration ( $578 \text{ DBS subscribers} \div 2,450 = 23.60$ ) would still exceed the 15 percent required to satisfy the competing provider test.

subscribership data, Mediacom provided the City with a copy of the SBCA Report identifying the total number of DBS subscribers located within the franchise area, as well as a copy of the methodology detailing how SBCA reached this result.<sup>27</sup> If the City believed that other data would provide more accurate DBS subscriber counts, the burden to present such evidence for the record was the City's. The SBCA Report specifies the methodology used in compiling the DBS subscribership and addresses many of the City's other allegations regarding the type of subscribers that are included and excluded to avoid duplication and accurately reflect the individuals subscribing to DBS service within the franchise area.<sup>28</sup> Accordingly, we will accept the number of Jackson DBS subscribers indicated in Mediacom's petition.

10. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>29</sup> as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Community. Therefore, the second prong of the competing provider test is satisfied for the Community.

11. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Community listed on Attachment A.

### III. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Mediacom Southeast LLC **IS GRANTED**.

13. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the Community set forth on Attachment A **IS REVOKED**.

14. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>30</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>27</sup>Petition Exhibits 4 and 5.

<sup>28</sup>Reply at 2-4.

<sup>29</sup>Petition at 6 and Exhibit G.

<sup>30</sup>47 C.F.R. § 0.283.

**ATTACHMENT A****CSR 6666-E****COMMUNITIES SERVED BY MEDIACOM SOUTHEAST LLC**

<b>Communities</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS Subscribers</b>
Jackson	AL0097	27.60%	2094	578

\*CPR = Percent of competitive DBS penetration rate.